

The Employee Plans Examination Process

Internal Revenue Service—Tax Exempt and Government Entities (TE/GE) Division

The TE/GE Mission

To provide Tax Exempt and Government Entities customers top quality service by helping them understand and comply with applicable tax laws and to protect the public interest by applying the tax laws with integrity and fairness to all.

Introduction

The goal of Employee Plans (EP) Examinations is to promote voluntary compliance by reviewing the operation of retirement plans for consistency with plan terms and pension law. This document discusses general rules and procedures that we follow in examinations. It explains what happens during an EP examination and how certain compliance problems can be corrected.

As a taxpayer, you have the right to be treated fairly, professionally, and courteously by TE/GE employees. **Publication 1, Your Rights as a Taxpayer**, explains your rights when dealing with the TE/GE Division.

Comments and Suggestions

We welcome your comments and suggestions about this document and your suggestions for future editions. [You can e-mail us with your comments while visiting our web site at www.irs.gov/ep.]

Useful Items You may want to see —

IRS Publications

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| 556 | Examination of Returns, Appeal Rights, and Claims for Refund |
| 560 | Retirement Plans for Small Business |
| 571 | Tax-Sheltered Annuity Programs for Employees of Public Schools and Certain Tax-Exempt Organizations |
| 575 | Pension and Annuity Income |
| 590 | Individual Retirement Arrangements (IRAs) |
| 1020 | Appeal Procedures for Employee Plans Examinations |

Examination of Returns

EP Examinations uses a centralized case selection and review process to enhance consistency of enforcement activities and to focus resources on the areas that have the most positive impact on the private retirement system. Our activities include identifying areas of noncompliance, developing corrective strategies and assisting with those strategies.

The Examination

The examination usually begins when a specially trained agent notifies you by phone or letter that your plan has been selected. A letter confirming the audit will follow the initial contact. This letter includes a detailed list of items that you or your representative will be required to provide to complete the examination. If the items are well organized and complete we can conduct the examination more easily and in a shorter time. We may request that you provide some items before our initial appointment.

You can have someone represent you during the examination. This person must be an attorney, accountant, enrolled agent, an enrolled actuary, or the person who prepared the return and signed it as the preparer. If you choose to have someone represent you in your absence, you must furnish us with written authorization. You may use **Form 2848, Power of Attorney and Declaration of Representative**, for this authorization.

The examination may include a complete review of plan operations or may focus on specific issues.

The most common areas of review include—

1. **Eligibility, participation, and coverage**—Are eligible employees properly participating?
2. **Vesting**—Have service and vesting been properly credited?
3. **Discrimination**—Do contributions, benefits, rights or features favor highly compensated employees?
4. **Top heavy requirements**—Have minimum contributions and benefits, and accelerated vesting, been provided?

5. **Contribution and benefit limits**—Are contributions and benefits within applicable limits?

6. **Funding and deductions**—Are contributions sufficient and timely, and deductions within applicable limits?

7. **Distributions**—Are distributions properly made and timely and accurately reported?

8. **Trust activities**—Is the trust operated for the exclusive benefit of participants and in accordance with fiduciary standards?

9. **Plan and trust documents**—Does the form of the plan and trust timely meet applicable tax law?

10. **Returns and reports**—Were federal returns and reports timely and accurately filed?

Initial Interview. To begin the examination you will be asked to explain the plan's administrative practices and procedures. This will help the examiner understand your plan, focus the review, and complete the exam in a shorter time.

Information Review. The examiner will analyze your information, perform tests, and sample data for particular compliance issues. Based on this review the examiner may expand the analysis to include additional details and larger samples. The agent is expected to continue the examination until it is reasonably certain that the information return and qualification requirements have been fulfilled.

Requests for additional information. The examiner may require additional information or corrective action prior to concluding the exam. If so, the examiner will explain the reason for the request, describe the information, and provide a reasonable response time.

Closing interview. When the initial fieldwork is concluded, the examiner will explain the areas that may require your attention or corrective action.

Review process. The examiner's work is subject to a random review process for managerial, technical and procedural accuracy. If your plan is selected for review, you may experience a delay and may be required to provide additional information.

Closing letter. The final step is a letter that explains the conclusions reached by the examiner. Issues that arise are usually resolved at the examination level. Any issues that cannot be resolved by agreement will be stated in the closing letter, which will begin your time for appeal. See **Publication 1020**.

Resolving Qualification Issues—The EP Compliance Resolution System (EPCRS)

A failure to satisfy plan terms and applicable pension law may result in disqualification of the plan, including the loss of tax exempt status for the trust, loss of tax deductions for the employer, and unanticipated taxable income to participants. In most examinations, however, EP will propose alternatives that preserve tax qualified status of the plan. EPCRS is a comprehensive system of correction programs that permits plan sponsors to correct most qualification failures. These programs are generally not available if the law provides tax consequences other than disqualification of the plan.

EPCRS includes the following programs for plans that are under examination—

Self-Correction Program (SCP). A plan sponsor that has established compliance practices and procedures may, at any time, correct insignificant operational failures without paying any fee or sanction. In addition, in the case of a qualified plan that is the subject of a favorable determination letter from the IRS, or in the case of a 403(b) plan, the plan sponsor may be able to correct even significant operational failures without payment of any fee or sanction, if the correction has been substantially completed by the time you are notified that the plan has been selected for examination. All years involved must be corrected, even years not under examination or beyond the statute of limitations.

Audit Closing Agreement Program (Audit CAP). If a qualification failure has not been corrected and is not eligible for correction under SCP, the plan sponsor may be able to enter into an agreement with the IRS regarding correction of the failure and payment of a sanction. The sanction will bear a reasonable relationship to the nature, extent and severity of the failure, taking into account the extent to which correction occurred before the examination.

Tax Information

TE/GE provides a great deal of free information. The following are sources for forms, publications, and additional information.

EP Questions: 1-877-684-5500 and 1-202-622-6074(not toll free)

Forms and Publications: 1-800-829-4059

Internet: www.irs.gov/ep